



Council Policy

1.5 Legal Representation Costs and Indemnification - Councillors and Employees

Introduction

Section 9.56 of the Local Government Act 1995 provides protection from actions in tort where Council or committee members, employees and certain persons appointed by the Local Government have acted in good faith. However, the local government environment is highly regulated and can be complex, and there may be occasions when Councillors and employees require legal advice and representation while carrying out their lawful functions and duties. If this eventuates, the Shire of Capel (the Shire) is committed to protecting their interests.

Purpose

This policy provides a framework to support current or former Councillors and employees if they become involved in civil legal proceedings through their official functions.

In each case it will be necessary for the Shire to determine whether assistance with reasonable legal costs and other liabilities is justified for the good government of the district.

Definitions

Approved lawyer is to be -

- a. A certified practitioner under the Legal Professional Act 2008 (as amended); and
- b. Approved by the council.

Councillor or employee means a current or former Councillor or employee of the Shire of Capel.

Legal proceedings may be civil, criminal, or investigative.

Legal representation is the provision of legal services, to or on behalf of a Councillor or employee, by an approved lawyer.

Legal representation costs are the costs, including fees and disbursements, properly incurred in providing legal representation.

Legal services includes advice, representation or documentation that is provided by an approved lawyer.

Payment by the Shire of Capel of legal representation costs may be either by:

- a. Direct payment to the approved lawyer (or the relevant firm) or;
- b. Reimbursement to the Councillor or employee.

Policy statement

1. Payment criteria

The following criteria will be used in determining whether the Shire will pay legal representation costs for a Councillor or employee:

- a. The legal representation costs must relate to a matter that arises from the performance by the Councillor or employee of their functions
- b. The legal representation cost must be in respect of legal proceedings that have been, or may be, commenced.
- c. In performing the function to which the legal representation relates, the Councillor or employee must have acted in good faith and must not have acted unlawfully or in a way that constitutes improper conduct.
- d. The legal representation costs do not relate to a matter that is of a personal or private nature.

2. Types of legal costs

If the criteria in policy statement 1 are satisfied, the Shire may approve the payment of legal representation costs.

2.1 The Shire may provide financial assistance to Councillors and employees in connection with performance of their duties provided that the Councillor or employee has acted reasonably and has not acted illegally, dishonestly, against the interests of the local government, or in bad faith.

2.2 The Shire may provide assistance in the following types of legal proceedings:

- a. To enable proceedings to be commenced and/or maintained by a Councillor or employee to permit them to carry out their functions (e.g. where a Councillor or employee seeks to take action to obtain a restraining order against a person using threatening behaviour to the Councillor or employee)
- b. Where proceedings are brought against a Councillor or employee in connection with their functions (e.g. an action for defamation or negligence arising out of a decision made by a Councillor or employee).

2.3 The shire will not assist in the following types of legal proceedings:

- a. A defamation action or a negligence action instituted by a Councillor or employee, except in exceptional circumstances.
- b. Criminal matters
- c. A complaint of serious or minor misconduct under the Corruption, Crime and Misconduct Act 2003.

2.4 Councillors and employees are not precluded from taking their own private action on these types of legal proceedings.

3. Application for payment

3.1 A Councillor or employee who seeks assistance is to make a written application to the Council. A suitable

application form may be provided by the CEO, or the written request for payment of legal representation costs is to describe:

- a. The matter for which legal representation is sought
- b. How that matter relates to the functions of the Councillor or employee making the application

- c. The lawyer (or law firm) to be asked to provide the legal representation
- d. The nature of legal representation to be sought (such as advice, representation in court, preparation of a document etc.)
- e. An estimated cost of the legal representation
- f. Why it is in the interests of the Shire for payment to be made

- 3.2 The application is to be accompanied by a signed written statement by the applicant that they:
- a. Have read and understand the terms of this policy.
 - b. Acknowledge that any approval of legal representation costs is conditional on the repayment provisions and any other conditions to which approval is subject.
 - c. Undertake to repay to the Shire any legal representation costs in accordance with the provisions of Policy statement 9 of this policy.

- 3.3 The application must contain a declaration by the applicant that they have acted in good faith and have not acted unlawfully or in a way that constitutes improper conduct in the matter.

- 3.4 Where possible, the application should be made before the commencement of the legal representation to which the application relates.

- 3.5 An application is also to be accompanied by a report prepared by the CEO or where the CEO is the applicant, by an appropriate employee.

4. Legal representation costs – Limit

The Council shall set a limit on the costs to be paid however, a Councillor or employee may make a further application to the Council in respect of the same matter.

5. Decision Process and Conditions

- 5.1 The Council may refuse, grant, or grant subject to conditions, an application for payment of legal costs.

- 5.2 Conditions may include but are not restricted to a financial limit and/or a requirement to enter into a formal agreement, including a security agreement, relating to the payment and repayment of legal representation costs.

- 5.3 The Council may have regard to any insurance benefits that may be available to the applicant under the Shire's policies.

6. Revocation and Variation

- 6.1 The Council may at any time revoke or vary an approval, or any conditions of approval, for the payment of legal representation costs.

- 6.2 Subject to the principles of natural justice, Council may determine that a Councillor or employee whose application has been approved, has, in respect of the matter for which the approval was made:

- a. Not acted in good faith or has acted unlawfully in a way that constitutes improper conduct
- b. Given false or misleading information in respect of the application and require the repayment by the Councillor or employee, of the legal representation costs paid by the Shire.

- 6.3 A determination under clause 6.2 may be made by the Council only on the basis of and consistent with, the findings of a court, tribunal, or inquiry.

6.4 Where the Council makes a determination under clause 6.2, the legal representation costs paid by the Shire are to be repaid by the Councillor or employee in accordance with Policy statement 8. The Council may take action to recover any such costs in a court of competent jurisdiction.

7. Financial interest provisions

A Councillor or employee requesting financial support for legal services, or any other person who might have a financial interest in the matter, should take care to ensure compliance with the financial interest provisions of the Local Government Act 1995.

8. Repayment of legal representation costs a Councillor or employee whose legal representation costs have been paid by the Shire is to repay the Shire:

- a. All or part of those costs in accordance with a determination by the Council under clause 6.4
- b. As much of those costs as are available to be paid by way of set-off where the Councillor or employee receives moneys paid for costs, damages, or settlement, in respect of the matter for which the Shire paid legal representation costs.

8.1 Any amount recovered by a Councillor or employee in proceedings, whether for costs or damages, will be offset against any moneys paid or payable by the Shire.

Application

This policy applies to any current or former Councillor or employee of the Shire of Capel, subject to meeting the criteria set out in the policy.

Procedure

Department:	Council	Next review:	June 2023
Reviewer:	Chief Executive Officer	Legislation:	Legal Profession Act 2008
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